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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,590	10/19/2001	Mark DeSilets	US018173	1157

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EXAMINER

JUNG, WILLIAM C

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,590

Applicant(s)

DESILETS ET AL.

Examiner

William Jung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7-16 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-16 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed May 13, 2004 have been fully considered but they are not persuasive.

The provisional double patenting rejection may be overcome by amendment to the claims to distinguish the invention from the intervening application or to file terminal disclaimer. The application has done neither, the amendment to claim did not change the invention. Therefore the provisional double patenting is maintained and repeated in 4.

McKinnon reference has been withdrawn since the separation between the first and second imagers does not actuate. However, Townsend reference as shown in figure 2C clearly illustrates that the separation between the first and second imager is varied.

In regards to Ivan et al, the claims 17, 20, and 21 are anticipated since the figure 18 shows the X-ray unit 150 is integrated onto the patient support 28 where the x-ray imaging unit can be slidably positioned along the patient support 28. As to applicant's assertion that the X-ray unit confined to C-arm cart is partially correct. Ivan et al discloses an alternatively embodiment as shown in figure 20 where the X-ray unit is a C-arm cart. However, figure 18 illustrates clear anticipation of claims 17, 20, and 21.

Double Patenting

2. Claims 1, 3, 4, 7-9, 9-17, and 20-24 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16-31 of U.S. Patent No. 6,754,520. Although the conflicting claims are not identical, they are not patentably distinct from each other because 520' claims substantially the same invention.

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More specifically, claim 16 in 520' claims CT imaging apparatus with first and second XT imaging devices separated but axially aligned to receive patient support structure through the first and second bores respectively (It is inherent that MRI or CT has a bore to house the patient. see 520' claim 12). In addition claim 16 in 520' claims linearly aligned actuator for separating the first and second opening of the first and second imaging device. Moreover, claim 16 in 520' disclose that the patient support structure is on rail aligned to first and second bore. Claim 17 in 520' further disclose that the separation of the imaging devices via actuator is to allow caregiver to perform one or more interventional applications of the patient. Claims 16 and 17 in 520' disclose all claimed features of claims 1, 3, 4, 11-13, 17, 20, and 22.

Similarly, newly added claims 23 and 24 where a method of acquiring medical images using the device described above is disclosed in claims 21 and 25 of 520'.

Claims 7-9 in current application are identical disclosure to claims 12-14 in 520'.

Claims 14-16 and 21 in current application are identical disclosure to claims 18-20 in 520'.

3. Claim 1 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/027,843. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims comprise a first tomographic medical imaging device having a first bore, a second tomographic medical imaging device having a second bore, and the first and second imaging devices, each secured by a housing. Claim 1 of the '843 has a narrower scope in that it further comprises, "an actuating mechanism for moving the first and second imaging devices.

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However, since the other elements between the claims are identical, should both applications become allowed, claim 1 of the 843' application would be readable on the more general claim 1 of the instant application. Therefore, provisional double-patenting exists.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 3, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by *Townsend et al* (US 6,490,476).

Townsend teaches a combined PET and X-ray CT imager, comprising:

-A first CT tomographic imager with a first opening, as in claim 7. (column 12, line 49)

-A second PET tomographic medical imager having a second opening, as in claim 8.

(column 12, lines 50) (Figure 2b)

-Alignment structure securing the openings of the first and second imaging devices in alignment with an imaging axis during the formation of one or more tomographic images, by at least one of the imaging devices, of the subject patient', (Column 12, lines 49-53)

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-A patient support structure extending through the openings of the first and second imaging devices during the formation of one or more images by at least one of the imaging devices; (Space provided between CT and PET imagers, figure 2B) and

-An actuator for separating the first and second openings of the first and second imaging devices from each other by a selected distance, wherein the distance between the first and second openings allows a caregiver to perform one or more interventional applications on the subject patient between the first and second imaging devices and the distance is sufficient to allows a caregiver to perform at least a portion of a biopsy procedure on the subject patient. (column 20, lines 3-10).

6. Claims 17, 20, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by *Ivan et al* (US 6,364,526).

Ivan teaches an MR/X-Ray imager, comprising;

-providing a first housing supporting a first tomographic scanner having a first bore for obtaining tomographic imaging information from at least a portion of a patient;

-providing a second housing supporting a second tomographic scanner having a bore for obtaining tomographic imaging information from at least a portion of a patient; (Column 10, lines 46-55)

-connecting the first and second housings by an actuator;

-Actuating the actuator to position each of the first and second housings between an adjoined position, with the axes of the first and second scanner bores substantially aligned, and a separated position, with the scanner bores spaced from each other by the linear actuator; (column 10, lines 35-55)

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-operating the first and second scanners in different modalities with respect to each other when the first and second scanners are in the adjoining position to obtain imaging information from the patient; and

-operating one of the first and second scanners in a modality obtaining imaging information representing anatomical structures of the patient when in the first and second scanners are in the separated position. (column 10, lines 35-40)

-Further comprising forming a patient access area between the first and second scanners bores when the first and second housings are placed in the adjoining position, the access area allowing direct access by a caregiver to a patient extending through the first scanner bore and at least partially positioned between the first and second scanners, as in claim 20. (Figures 2 and 8)

-Further comprising operating one of the first and second scanners in a modality obtaining imaging information representing physiologic functions of the patient, which are inherently obtained when one obtains a diagnostic scan image, (column 4, line 50) as in claim 21.

Allowable Subject Matter

7. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Jung, Ph.D. whose telephone number is 571-272-4739. The examiner can normally be reached on Mon-Fri 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJ
January 18, 2005


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